

## Internal Revenue Service

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Date:

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### Legend:

Portfolio A =

Fund A =

Fund B =

Fund C =

Fund D =

Portfolio B =

Fund E =

Fund F =

Fund G =

Fund H =

Fund I =

Fund J =

Fund K =

Fund L =

Advisor =

Transfer Agent =

Distributor                =  
Date                        =

Dear                        :

This is in reply to a letter dated October 13, 2009, requesting rulings on behalf of Portfolio A and its series funds, Funds A-D (collectively, the Portfolio A Funds), and Portfolio B and its series funds, Funds E-L (collectively, the Portfolio B Funds). Portfolio A and Portfolio B request a ruling that distributions made by Funds A-L (the Funds) will be eligible for the dividends paid deduction under sections 561 and 852 of the Internal Revenue Code.

**Facts:**

Portfolio A and Portfolio B are each registered as an open-end investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., as amended (the “1940 Act”). The Portfolios are each a “series company” under Rule 18f-2 of the 1940 Act with multiple portfolio series outstanding, including the Funds. The Portfolios represent that each Fund has been and will continue to be operated in a manner intended to qualify it as a regulated investment company (RIC) under section 851. Each Fund is treated as a separate corporation under section 851(g).

Advisor serves as investment advisor and administrator for the Funds. There is currently no sub-advisor for the Funds. Transfer Agent, an affiliate of Advisor, is the transfer agent for the Funds. Distributor, an affiliate of Advisor, serves as the distributor for the Funds.

The Portfolios have adopted a system of multiple classes of shares for each of the Funds (the “multiple class system”) pursuant to Rule 18f-3 under the 1940 Act. Each of the Portfolio A Funds may issue one or more of the following classes of shares: “Class A”, “Class B”, “Class C”, “Class R”, “Class Y” and “Class Z”. Portfolio B Funds may issue one or more of the following classes of shares: “Class A”, “Class B”, “Class C”, “Class E”, “Class F”, “Class R”, “Class T”, “Class Y” and “Class Z”. The multiple class system enables the Portfolios to offer investors the option of purchasing Fund shares subject to various fees and sales charges. For example, Class A, Class E and Class T shares are subject to a front-end sales charge with lower ongoing distribution fees payable from the assets of the class at an annual rate as a percentage of average daily net assets and generally no contingent deferred sales charge (“CDSC”). Class B, Class C, Class F, and Class R have no front-end sales charges but are subject to relatively higher annual ongoing distribution fees payable as a percentage of average daily net assets and a CDSC if the shares are redeemed within a specified number of years after purchase. Class Y and Class Z shares offer no front-end sales charges and no distribution and shareholder servicing fees or CDSC.

The Class Y shares are known as the “Institutional Class” and all other classes of shares are known as the “Retail Classes”. Like Class Z, Class Y shares are not subject to any front-end sales charge, CDSC, or distribution or shareholder servicing fees. However, Class Y shares have significantly higher minimum investment amounts than Class Z and other retail class shares. Also, unlike the retail class shares, which are subject to fund-wide allocation of transfer agency fees and expenses, Class Y shares are subject to a separate, class-specific allocation of transfer agency fees and expenses. Class Y shares do not receive any sub-transfer agency services and therefore, are not assessed and do not incur any sub-transfer agency fees or expenses, unlike the retail classes.

Except as noted below, all shares of each Fund are continually offered pursuant to a public offering. The various classes of shares have different investment and eligibility requirements. It is represented that by offering distinct classes of shares, the Portfolios are able to provide investors with a broad range of distribution and service arrangements and are able to apportion distribution expenses more equitably among different types of investors.

Each of a Fund’s share classes represents interests in the same portfolio of securities and has identical voting, dividend, liquidation, and other rights and the same terms and conditions, except (i) as noted above, certain classes are subject to some combination of fees and/or sales charges; (ii) Class B shares will convert automatically into Class A shares of the same Fund after eight years, subject to certain conditions; (iii) Class F shares will convert automatically to Class E shares after eight years, subject to certain conditions; (iv) Class E shares convert to Class A shares of the same Fund if the irrevocable trust in which they are held terminates and Class F shares convert to Class B shares of the same Fund if the trust in which it is held terminates; (v) each class has exclusive voting rights on any matter dealing with that class’s distribution or shareholder servicing arrangements; and (vi) there are differences relating to eligible investors as may be set forth in the prospectuses and statements of additional information of the Portfolios. Shareholders of any of the Funds may exchange their shares for available shares of the same class in any of the other Funds at any time, with the exception of Class E and Class F shares, which are only offered by Fund E. The Funds have represented that each of a Fund’s share classes separately meet the requirements of section 67(c)(2)(B) and that the rights and obligations of the shareholders of each class are set forth in the organizing documents of each Fund.

Prior to Date, all “Class Expenses” were allocated pro rata to each class of a Fund on the basis of the relative net assets of the respective classes. “Class Expenses” include all expenses (other than distribution fees and shareholder servicing fees) that are properly allocable to a separate class under Rule 18f-3 of the 1940 Act. Distribution and shareholder servicing fees incurred by a specific class were specially allocated and paid by that class. A Fund’s total transfer agency fees were based on the aggregate

number of open accounts across all of the Fund's share classes and then allocated to each share class based on each class's relative net assets. Also, all identifiable out-of-pocket transfer agency expenses were allocated to a Fund based on evenly weighted factors, including the total number of shareholder accounts, number of transactions, and average assets. Sub-transfer agency fees and expenses were allocated to a Fund based on actual services provided and invoiced to the particular Fund and, in turn, were allocated to each class based on the class's share of the Fund's net assets.

The services provided and fees assessed under the Class Y transfer agency agreements are substantially similar to those currently provided under the Retail Class transfer agency agreements between the Funds and Transfer Agent for all of the other classes. However, unlike the Retail Classes, the transfer agency fees and expenses incurred for Class Y shares are specially allocated to Class Y shareholders and the Class Y shareholders do not receive any sub-transfer agency services. Therefore, the Class Y shareholders are not assessed any sub-transfer agency fees or expenses.

Beginning on Date, each Fund has specially allocated transfer agency fees to Class Y shares based on a per account fee for each Class Y open account. The similar per-account transfer agency fees under Retail Class transfer agency agreements are determined without reference to the number of Class Y open accounts or Class Y shares' assets. While the benefit of any waiver or reimbursement of all or part of Class Y class expenses is specially allocated to the Class Y shares, any waiver or reimbursement of the Retail Classes' class expenses is allocated based on each Retail Class's share of net assets relative to the net assets of all Retail Class shares, in effect treating all of the Retail Classes like a single class of shares. All identifiable out-of-pocket transfer agency expenses for both the Class Y shares and the Retail Classes' shares are allocated to each Fund based on actual services performed and invoiced. The transfer agency expenses are allocated based on each Retail Class's share of the net assets relative to the net assets of all Retail Class shares. This allocation method is also applicable to any sub-transfer agency fees or expenses attributable to the Retail Classes of shares.

All other expenses of the Funds (except distribution and shareholder servicing fees and expenses) continue to be aggregated and allocated to each class, including Class Y, in proportion to the respective class's share of the net assets of the Fund. The benefit of any waiver or reimbursement of all or any part of distribution fees and/or expenses or shareholder servicing fees is allocated to the share class on behalf of which the fee or expense was incurred.

### **Law, Analysis and Conclusion:**

Section 851(a) defines a RIC, in part, as a domestic corporation registered under the 1940 Act as a management company.

Section 851(b) limits the definition of a RIC to a corporation meeting certain election, gross income, and diversification requirements.

Section 851(g) provides a special rule for a RIC having more than one fund. This provision treats each fund as a separate corporation for all purposes of the Code, other than the definitional requirement of section 851(a).

Section 852 provides that a RIC is not taxable under subchapter M, part I, unless its deduction for dividends paid (as that term is defined in section 561(a) with certain modifications) for the taxable year equals or exceeds a specified portion of its taxable income (with certain adjustments) and its net tax-exempt interest income.

Section 561(a) defines the deduction for dividends paid, for purposes of section 852, to include dividends paid during the taxable year. Section 561(b) applies the rules of section 562 to determine which dividends are eligible for the deduction for dividends paid under section 561(a).

Section 562(c) provides that the amount of any distribution by a RIC to its shareholders shall not be considered a dividend for purposes of computing the dividends paid deduction under section 561, unless such distribution is *pro rata*, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

Rev. Proc. 99-40, 1999-2 C.B. 565, describes certain conditions under which distributions to RIC shareholders may vary and nevertheless be deductible under as dividends under section 562. The revenue procedure applies to a RIC that issues groups of shares that represent interests in the same portfolio of securities but have different arrangements for shareholder services or the distribution of shares or both. The revenue procedure provides that if variations in distributions to shareholders of different Qualified Groups (as defined in section 3 of the Revenue Procedure) exist solely as a result of the allocation and payment of fees and expenses and the allocation of the benefit of waivers and reimbursements of fees and expenses (as provided in the Revenue Procedure), the variations do not prevent the distributions from being dividends under section 562.

Based on the information submitted and representations made, we conclude that each Fund in Portfolios A and B (Funds A–L) meets the requirements of Rev. Proc. 99-40. Section 3.02 of this revenue procedure provides that certain expenses not related to the management of the RIC's assets, a category which includes transfer agency fees, may be allocated to a particular Qualified Group if these expenses are actually incurred in a different amount by that Qualified Group or if the Qualified Group receives services

of a different kind or to a different degree than other Qualified Groups. The special allocation of sub-transfer agency fees away from Class Y, which does not receive sub-transfer agency services, and the allocation of transfer agency fees to the retail classes as a whole in accordance with the net asset value of each retail class, is an allocation method based on the standards enunciated in section 3.02 of Rev. Proc. 99-40.

Further, section 4.02 of this revenue procedure provides that if, under section 3.02, a fee or expense is allocated on the basis of the amount incurred or services received, as in the case of the transfer agency and sub-transfer agency fees described in this letter, the benefit of any waiver or reimbursement of such a fee or expense is to be allocated in like fashion. Funds have represented that the benefit of any waiver or reimbursement of transfer agency fees is to be allocated to the share class on behalf of which the expense was incurred, in accordance with the requirements of section 4.02 of Rev. Proc. 99-40.

Accordingly, we rule that variations in distributions to shareholders of Funds A-L that exist solely as a result of the allocation and payment of fees and expenses and the allocation of the benefit of waivers and reimbursement of fees and expenses as described in this letter do not cause dividends paid by each Fund to be preferential under section 562.

No opinion is expressed concerning whether any Fund qualifies as a RIC that is taxable under subchapter M of Chapter 1 of the Code. Also, assuming any Fund does qualify as a RIC, no opinion is expressed as to the federal tax consequences of any expense allocation, waiver, or reimbursement other than as provided in Rev. Proc. 99-40.

This ruling is directed only to the Funds who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

Susan Thompson Baker  
Susan Thompson Baker  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)